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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/750,994	01/02/2004	Joseph M. Jarke	RJPD:006US	5484
32425	7590	12/28/2004		
FULBRIGHT & JAWORSKI L.L.P. 600 CONGRESS AVE. SUITE 2400 AUSTIN, TX 78701			EXAMINER	
			NGUYEN, SON T	
			ART UNIT	PAPER NUMBER
			3643	

DATE MAILED: 12/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/750,994	JARKE ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	Son T. Nguyen	3643

*— The MAILING DATE of this communication appears on the cover sheet with the correspondence address —*

SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM  
THE MAILING DATE OF THIS COMMUNICATION

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 02 January 2004.  
2a)  This action is FINAL. 2b)  This action is non-final.  
3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213

## **Disposition of Claims**

4)  Claim(s) 1-11 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5)  Claim(s) \_\_\_\_\_ is/are allowed.  
6)  Claim(s) 1-9 is/are rejected.  
7)  Claim(s) 10 and 11 is/are objected to.  
8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on 02 January 2004 is/are: a)  accepted or b)  objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.

4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_ .  
5)  Notice of Informal Patent Application (PTO-152)  
6)  Other: \_\_\_\_\_

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. **Claims 1-9** are rejected under 35 U.S.C. 102(b) as being anticipated by Agerley et al. (US 4586464).

For claim 1, Agerley et al. teach an apparatus attachable to a container (col. 2, line 29, the source being the container or the pipe or hose can be considered a container of water) useful for watering an animal, the apparatus comprising: a base cap 1-4,4a-c,5a,12,13 removably attachable to the container, the base cap having a base cap flow aperture 12,13,15; and a flow activation member 7,8,9,10,10a removably attachable to the base cap, the flow activation member having a triggering mechanism 8 and a flow activation member flow aperture (the openings in refs. 7 & 10a).

For claim 2, Agerley et al. teach an outer cap 20 removably attachable to the base cap, the outer cap having an aperture 22 through which the triggering mechanism can pass (see fig. 4).

For claim 3, Agerley et al. teach where the base cap is threaded (see fig. 1a, ref. 4).

For claim 4, Agerley et al. teach where the base cap includes multiple base cap flow apertures (on members 2,4a,12,13,15).

For claim 5, Agerley et al. teach where the flow activation member includes multiple flow activation member flow apertures (on members 7,10,10a).

For claim 6, Agerley et al. teach an apparatus attachable to a container useful for watering an animal, the apparatus comprising: a base cap (reference numerals as designated in the above claim 1) removably attachable to the container, the base cap having a base cap flow aperture (reference numerals as designated in the above claim 1); and a flow activation member (reference numerals as designated in the above claim 1) configured to fit over a portion of the base cap (the portion is member 5,12,5a,13, see fig. 1b) and being removably attachable to the base cap, the flow activation member having a lever 8 and a flow activation member flow aperture (reference numerals as designated in the above claim 1), the lever having a deactivated position and an activated position.

For claim 7, Agerley et al. teach where the apparatus further comprises: an outer cap (reference numerals as designated in the above claim 1) removably attachable to the base cap, the outer cap having a lever aperture (reference numerals as designated in the above claim 1) through which the lever can pass, the outer cap also being configured to fit over a portion of the base cap (see fig. 4, the portion would be member 5,12,13,5a) and a portion of the flow activation member (see fig. 4); and where the base cap is threaded.

For claim 8, Agerley et al. teach where the base cap includes multiple base cap flow apertures , and the flow activation member includes multiple flow activation member flow apertures.

For claim 9, Agerley et al. teach An apparatus attachable to a container useful for watering an animal, the apparatus comprising: a base cap (reference numerals as designated in the above claim 1) removably attachable to the container, the base cap having a base cap flow aperture (reference numerals as designated in the above claim 1); and a flow activation member (reference numerals as designated in the above claim 1) configured to fit over a portion of the base cap (see claim 6) and being removably to the base cap, the flow activation member having a lever 8, a washer 9 surrounding the lever, and a flow activation member flow aperture (reference numerals as designated in the above claim 1), the lever having a deactivated position and an activated position.

***Allowable Subject Matter***

3. **Claims 10 & 11** are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Son T. Nguyen whose telephone number is 703-305-0765. The examiner can normally be reached on Mon-Fri from 9:00 to 4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 703-308-2574. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Son T. Nguyen  
Primary Examiner  
Art Unit 3643

stn